COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Cambridge Electric Light Company) D.T.E. 99-89

Commonwealth Electric Company)

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RESPONSE OF CAMBRIDGE ELECTRIC LIGHT COMPANY AND COMMONWEALTH ELECTRIC COMPANY TO MOTION FOR RECONSIDERATION OF THE ATTORNEY GENERAL

Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (together, the "Companies") respectfully request that the Department deny the motion for reconsideration of the Attorney General (the "Motion") concerning the Department's order in this proceeding dated October 26, 2000 (the "Order"). The Motion fails to meet the Department's standard for reconsideration because there are no extraordinary circumstances that require the Department to reconsider its Order.

I. STANDARD OF REVIEW

The Department's standard regarding reconsideration is well established. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department reexamine the record for the express purpose of substantively modifying a decision reached after review or deliberation. Boston Gas Company, D.P.U. 96-50-C (Phase I) at 13; North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered or decided in the main case. Boston Gas Company, supra. In addition, a motion for reconsideration may be based upon an argument that the Department's treatment of an issue was the result of mistake or inadvertence. Id.

II. THE ATTORNEY GENERAL'S MOTION FAILS TO SATISFY THE GOVERNING LEGAL STANDARD FOR RECONSIDERATION

A. Introduction

The Attorney General seeks reconsideration of two Department findings in the Order: (1) that the Companies' Seabrook obligations are properly treated as above-market purchased-power contracts for transition charge purposes; and (2) that the Companies satisfied their mitigation responsibilities imposed by the Restructuring Act concerning the Seabrook Agreement (Motion at 1). According to the Attorney General,

the Department failed to provide notice that it would address these issues (id. at 2). The Attorney General also argues that: (i) he made a timely request for evidentiary hearings; and (ii) the Department's decision was not based on "facts," but instead relied on the Companies' responses to Department information requests concerning the treatment of Seabrook investments (id. at 3-4). The Attorney General's contentions are without merit.

B. The Attorney General Had Proper Notice

The Attorney General had sufficient notice that Seabrook mitigation and the proper transition charge treatment of the Seabrook Agreement were at issue in this case. The Companies initial petition in this case explicitly requested the Department make the following relevant findings:

A. That the Buydown Agreement is in the public interest and will result in just and reasonable rates for the Companies' retail customers, consistent with the statutory requirements of G.L. c. 164, §§ 1A, 76, 94 and 94A;

B. That the Companies, in entering into the Buydown Agreement, have taken all reasonable steps to mitigate, to the maximum extent possible, the total amount of transition costs relating to Seabrook in accordance with G.L. c. 164, § 1G.

C. That the Buyout Amount shall be included in and recovered as part of the Transition Charge in accordance with the Companies' proposal, and as may be deemed required by G.L. c. 164, §§ 1A, 1G, 94 and 94A;

D. That the Department grant any other approvals and make any requisite findings as may be necessary or appropriate in relation to this Petition.

Petition for Approval of Buydown of Power Contract With Canal Electric Company for Seabrook Unit No. 1 Power at 5 (the "Petition"). Based on this clear statement of requested findings presented in the Companies' petition, the Attorney General cannot be heard to contest that notice of such issues was provided and that these findings, together with any relevant subsidiary findings, were "at issue" in the case.(1)

In fact, as indicated in the Department's Order, the Attorney General submitted comments to the Department that specifically referred to these Seabrook issues. Order at 6-7, citing Comments of the Attorney General, dated January 13, 2000. Moreover, the Department's numerous information requests to the Companies concerning the treatment of the Companies' Seabrook obligations and mitigation efforts provided additional notice to the Attorney General that such matters were at issue in this case (see Exh. DTE-2-3; Exh. DTE-3-1, Exh. DTE-3-2, Exh. DTE-2-3, Exh. DTE-1-7; Exh. DTE-1-8; Exh. DTE-1-10; Exh. DTE-1-15) (see New England Telegraph and Telephone Company, D.P.U. 94-50, at 288 (1995) (The obligation to provide notice has been fulfilled where an information request has been marked as evidence regarding an issue)). Accordingly, the Attorney General has failed to demonstrate any extraordinary circumstances concerning the notice provided in this case that would require reconsideration.

C. The Attorney General Did Not Request an Evidentiary Hearing

The Attorney General did not make a timely, or untimely, request for evidentiary hearings in this case. To the contrary, the Attorney General's submitted written comments are silent on such a request. The comments merely "suggest" that the Department consider the treatment of Seabrook costs in the Companies' pending transition charge reconciliation filing, D.T.E. 99-90 (Comments of the Attorney General at 3-4). Such a suggestion is not a request for an evidentiary hearing in the event that the Department addresses the relevant issues in this case. Moreover, even if the Attorney General had requested an evidentiary hearing, the Department is not required, as a matter of law, to grant such a request. 220 C.M.R. 1.06(1); Massachusetts Municipal Wholesale Company, D.P.U. 96-45-D (1996) (a hearing is not required unless the legal rights, duties or privileges of specifically named persons are required by constitutional right or statute to be determined in an adjudicatory

proceeding).

The Attorney General cites D.P.U./D.T.E. 97-111, at 62 (1998), where the Department previously indicated that the treatment of Seabrook investments would be resolved in the first case reconciling actual transition costs to estimated transition costs (Motion at 2). However, in the Order the Department specifically explains why it is ruling on these issues in this case.

[S]ince that Order [D.P.U./D.T.E. 97-111], the Department approved the Companies' divestiture of substantially all of their non-nuclear generation assets and the Companies' proposal to establish EIS for managing the proceeds of the divestiture. D.T.E. 98-78/83-A. This proceeding concerns the Companies' proposal to buydown the Seabrook Agreement from funds held by EIS. As such, this proceeding is the appropriate venue in which to resolve the treatment of Seabrook investments.

Order at 8-9. The Attorney General presents no previously unknown or undisclosed facts that would have a significant impact upon the Department's decision. Accordingly, reconsideration of the Department's Order should not be granted.

D. The Department's Order Was Based on Evidentiary Facts

The Attorney General's suggestion that the Department did not rely on "facts" to reach its decision is incorrect. The extensive record that was established in this case constitutes a full body of evidentiary facts that the Department is entitled to review, to consider and ultimately to rely upon in reaching its decision in this case. This record consists of the Companies' responses to 25 Department information requests, together with 12 exhibits presented by the Companies, including the Companies' two-volume Initial Filing in D.T.E. 99-90 (Exh. COM-10 and Exh. COM-11). The Attorney General is merely attempting to reargue issues already considered by the Department and has not brought forward any previously unknown or undisclosed facts that warrant reconsideration in this case.

I. CONCLUSION

For all of the reasons stated herein, the Companies respectfully request that the Department deny the motion for reconsideration of the Attorney General.

Respectfully submitted,

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1. 1 These requested findings are also referred to in the Department's Notice of Filing and Request for Comment in this case.